

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.4488 of 2002

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Dated: October 10, 2007
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Between:

M/s. Balaji Binny Rice Mill, rep. by its Proprietor
B. Sree Ramulu, S/o. Challaiah, aged 48 years,
Lingala Road, Telkapally, Mahaboobnagar District.

... Petitioner

And

Superintending Engineer (Operations)
A.P. Transco, Mahaboobnagar District,
And others.

... Respondents

Order:

This writ petition has been filed seeking Mandamus to declare the order dated 09-07-2000, passed by the second respondent, Divisional Engineer (Operations), A.P. Transco, Mahaboobnagar, in Order No.DEE/OP/JDL/Tech/F./D.No.1063, as arbitrary and illegal.

2. Heard learned counsel for the petitioner and learned Standing Counsel appearing for respondents.

3. Petitioner, a proprietary concern, availed electricity service from the respondents vide service connection No.491 under category-III, as per the terms and conditions of supply framed under the Electricity (Supply Act) 1948. The said service connection was inspected by the Assistant Divisional Engineer, Mahabubnagar, on 28-05-1999 and it was found out during inspection that the meter was stuck up in two phases and only one phase was moving in forward direction. On the said grounds, provisional assessment notice dated 22-02-2001 was issued demanding an amount of Rs.29,808/- from the petitioner for the period from 07/98 to 09-01-1999. With reference to the same inspection, another notice dated 31-05-2001 was issued demanding an amount of Rs.42,207/- for the period from 09-01-1999 to 28-05-1999. In the said notice, objections of the petitioner were invited within 15 days therefrom. Questioning the said notice, petitioner submitted representation dated 01-06-2001; however, the Divisional Engineer, Electrical, Operation, Jadcherla, rejecting the said representation, passed the impugned order, demanding an amount of Rs.72,015/- on account of backbilling for the estimated loss of energy for the charges referred above.

4. The case of the petitioner is that the assessment made by the Divisional Engineer is not in accordance with the terms and conditions of supply and it is alleged that though petitioner submitted representation dated 01-06-2001, the same was rejected without recording any reasons.

5. Respondent No.1 has filed counter affidavit, generally, denying the allegations of the petitioner, stating that as much as it was found out during the inspection that the meter was stuck up in two phases and only one phase was moving in forward direction, the inspecting

authority has proposed back billing on the shortfall after taking all the formalities into consideration and the same is in accordance with the Indian Electricity Act, 2003.

6. Heard learned counsel for the petitioner and learned Standing Counsel appearing for respondents.

7. Learned counsel for the petitioner submits that as per the terms and conditions of supply, in a case of back billing, there is no power for the respondents to assess the loss of energy on account of pilferage for the period more than six months. Learned counsel relies on the provision under Section 26(6) of the Indian Electricity Act, 1910. He further submits that though petitioner submitted representation dated 01-06-2001, the same has not been considered in proper perspective.

8. On the other hand, learned Standing Counsel appearing for respondents submits that as much as it was not in dispute that the meter was stuck up in two phases, the back billing amount is in accordance with the terms and conditions of supply.

9. In the instant case, it is to be noted that though there is an allegation that the meter was stuck up in two phases, however, it is not known as to why two demand notices have been issued, i.e. one dated 22-02-2001 for the period from 07/98 to 09-01-1999, demanding an amount of Rs.29,808/- and another dated 31-05-2001 for the period from 07/98 to 09-01-1999, demanding an amount of Rs.42,207/-. Though the Divisional Engineer referred to the representation of the petitioner dated 01-06-2001, in the impugned order, however, he did not record any reasons whatsoever with reference to the objections raised by the petitioner.

10. As much as the final assessing authority has not considered the

objections of the petitioner and it is the case of the petitioner that no power is conferred on the authorities to make assessment for the loss of energy in case of back billing on account of defect in the meter for the period more than six months in view of Section 26(6) of the Indian Electricity Act, 1910, I deem it a fit case where the matter has to be reconsidered.

11. This court, while admitting the writ petition, by order dated 11-03-2002, granted interim stay subject to the condition of petitioner depositing an amount of Rs.25,000/-. The said order has been continuing all along during the pendency of the writ petition and is still in force.

12. In the circumstances and for the reasons stated above, the order dated 09-07-2001, passed by the Divisional Engineer, Electrical, Operation, Jadcherla, is set aside and the matter is remanded for considering afresh. The petitioner may submit further objections, if any, to the respondents, within a period of six weeks from the date of receipt of this order. If any such objections are submitted, the same shall be considered, appropriate orders be passed and communicated to the petitioner. The amount of Rs.25,000/-, stated to have been deposited by the petitioner pursuant to the interim order of this court referred above, will be subject to further orders to be passed by the authority.

13. The writ petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY.

October 10, 2007

MRR

